IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE NO. 1 OF 2000
TO
GIFT TAX REFERENCE NO.7 OF 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF GIFT TAX - Applicant(s)
Versus
SHYAMA SARABHAI - Opponent(s)

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Appearance :
MR. MANISH R. BHATT for Applicant(s).
MR. R.K. PATEL for Opponent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/07/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

During the course of the arguments, the learned Counsel for the Revenue submitted that particular observations made by the Income Appellate Tribunal were contrary to the records and it went wrong in observing that even after transfer of the shares, the assessee did not become poorer, but, rather was enriched. He also submits that Section-4(1)(A) of the Gift Tax Act was rightly applied by the Gift Tax Officer and without appreciating its effect and impact, the Commissioner (Appeals) set aside the order and the order has been wrongly confirmed by the Tribunal. It is also the submission that on one side, the assessee was to receive certain preferential shares at a particular price and was selling the same to some Company for Rs.25/- only and was again purchasing fully paid-up shares of Rs.100/- each, but, it is to be seen that in agreement with the submissions of the assessee, the Commissioner (Appeals), so also the Tribunal, held that the value of the shares did not reduce despite their investment at the rate of Rs.25/-. He has also referred to the judgement of the Supreme Court in the case of ***Commissioner of Gift-Tax vs. Smt. Kusumben D. Mahadevia*** [***122 I.T.R. 38***] and ***S. Viji vs. Commissioner of Gift-Tax*** [***229 I.T.R. 421***] and submitted that in accordance with the directions of the Supreme Court, the value of the unquoted shares of the

Company were to be determined and this exercise was not completed by any of the authorities; the orders passed by the Commissioner, so also by the Tribunal, are bad. He also submitted that in the first transaction the market price of the gold was not taken into consideration, but, the market price of the gold bond was considered, though as the gold bonds were to mature within two days. In relation to the second transaction, it was submitted that the entire amount was invested in purchasing the shares (preferential & equity) and thereafter, in the continuous transactions, the shares were again sold back with a loss of Rs.75/-. For the third transaction, he submitted that after creation of the trust, the settler/assessee had lost all his ownership rights over the property upto the time of his death but only was left with the right to make a deed, will or codicil to issue directions to the trustees to pass on the profits or the property to his grand child/children. He submits that the authorities were also unjustified in holding that despite transfer of the gold bonds or preferential shares to the eight Companies, the assessee continued to be the *de facto* owner of the Companies because under the law, Company would be a different entity and the property transferred in favour of the Company would belong to the Company and the transferor would have no right of disposition or

release.

2. Mr.Patel, learned Counsel for the assessees, when was confronted with all these arguments, he submitted that if these questions have not been considered by the subordinate authorities or the Gift Tax Officer, then, the matters may be remitted back to the Gift Tax Officer with a clear direction that in accordance with the directions of the Supreme Court, as referred to above, the market value of the unquoted shares be determined and thereafter, the Gift Tax Officer may proceed to decide the question. In regard to the market price of the gold, he submits that the question be kept open so that the judicial conscience of the Gift Tax Officer can be satisfied that the market value of the gold has nothing to do with the market value of the gold bonds because of many hassles which one has to face in encashing the gold bonds. He also submits that the assessee be allowed to produce further material before the Gift Tax Officer to satisfy him that in fact, in any of the transactions, there was no essence of gift.

3. After hearing the parties, we are of the opinion that we must decide the question in favour of the Revenue, but, with a reservation that all these matters

are to be remanded back to the Gift Tax Officer for deciding afresh in accordance with law. The orders passed by the Tribunal, the Commissioner (Appeals) and the Gift Tax Officer are set aside. The matters are remanded back to the Gift Tax Officer for their decision afresh in accordance with law.

The Gift Tax Officer shall issue appropriate notices to the parties to appear before him, he shall give proper opportunity to the parties to lead evidence, documentary and oral, if required, and shall also decide the matters after giving an opportunity of hearing to the parties. The References stand disposed of accordingly. No costs.

[***R.S.Garg, J.***]

[***M. R. Shah, J.***]

*kamlesh**